

January 19, 2010

**Chief Heidi Rooks et al
Department of Water Resources
Habitat Expansion Agreement et al**

**Re: Comments Regarding the Draft Habitat Expansion Agreement and
Habitat Expansion Plan Committee by the California Fisheries and Water
Unlimited**

Chief Rooks:

Please place the California Fisheries and Water Unlimited on the mailing list for the Draft Habitat Expansion Plan and all submittals. Robert J Baiocchi is the president of the California Fisheries and Water Unlimited, a California Non-Profit Corporation. His e-mail address is enclosed. His background is enclosed.

The Habitat Expansion Agreement for the Sacramento River has some major significant discrepancies as follows:

- 1. I was an interested party to the Department of Water Resources (DWR), Pacific Gas and Electric Company (PG&E), State Water Contractors, CDFG, and a few NGOs prevented the needed Spring-run Chinook Salmon and Steelhead Restoration Project that was recommended by the US NOAA Fisheries on the North Fork Feather River and also the Middle Fork Feather River above Oroville Dam. Clearly the issues for DWR, PG&E, and the State Water Contractors was the cost of mitigating the damages these parties caused from Oroville Dam and PG&E dams to the presently endangered spring-run salmon and threatened Steelhead. At that time I represented the California Salmon and Steelhead Association. I now represent the California Fisheries and Water Unlimited.**
- 2. The Habitat Expansion Plan limits mitigation of pre-project spring-run Chinook salmon to 2,000 to 3,000 adults. That number of spring-run salmon to be mitigated in the Habitat Expansion Agreement is unreasonable and not in the public interest, and does not reflect the significant number of spring-run salmon that were damaged and harmed by dams in the Sacramento River watershed. Correct that discrepancy.**
- 3. Most likely adult spring-run salmon exceeded 100,000s of thousands of salmon in the Sacramento River watershed before the Shasta Dam, Oroville Dam; Bullards Bar Dam; and other dams were constructed and cut off their historic spawning and rearing habitat**

areas above the dams. I was exposed to the historic significant salmon runs because I was born in 1931 among Italian commercial salmon fishermen in San Francisco. Unfortunately because of the lack of enforcement and adequate mitigation measures by the State of California and the federal government the commercial fishing fleet of the San Francisco area has been harmed and damaged because of the significant losses of salmon populations.

4. Spring-run salmon were exterminated in the San Joaquin River watershed by water and hydropower projects because their historic spawning and rearing areas were cut over by the dams and very poor flow conditions. The responsible state and federal government overlooked the extermination of the San Joaquin River watershed salmon fishery because of politics.
5. The Habitat Expansion Agreement Committee is made of the California Department of Water Resources (DWR) and the Pacific Gas and Electric Company (PG&E). Both CDWR and PG&E have self-serving conflicts of interest to save money and not mitigate for the losses of spring-run salmon species and also steelhead species that were damaged by their projects. I reference you to the proposed mitigation measures for the restoration of endangered spring-run salmon and threatened steelhead trout developed by the US NOAA Fisheries for the North Fork Feather River (Truck and Haul). DWR; PG&E; State Water Contractors; CDFG, and a few NGO's prevented that restoration project from being implemented for self-serving reasons.
6. PG&E hydro dams on the North Fork Feather River prior to the construction of Oroville Dam adversely affected and damaged the spring-run salmon spawning and rearing habitat: above Big Bend Dam in the NFFR; above Poe Dam in the NFFR; above Cresta Dam in the NFFR; above Rock Creek Dam in the NFFR and also in the East Branch NFFR above Rock Creek Dam; and above Canyon Dam in the NFFR.
7. PG&E hydro dams on the North Fork Feather River prior to the construction of Oroville Dam adversely affected and damaged the steelhead trout spawning and rearing habitat: above Big Bend Dam in the NFFR; above Poe Dam in the NFFR; above Cresta Dam in the NFFR; above Rock Creek Dam in the NFFR and also the East Branch NFFR above Rock Creek Dam; and above Canyon Dam in the NFFR.
8. The construction of Oroville Dam by CDWR prevented the upstream migration of adult spring-run salmon and steelhead trout to their historic spawning and rearing areas above Oroville Dam in the North

Fork Feather River watershed and Middle Fork Feather River watershed. The Feather River Salmon and Steelhead Hatchery has never mitigated for the losses to pre-project spring-run salmon.

- 9. Some of the losses to juvenile spring-run salmon and steelhead trout in the Sacramento River watershed were caused at DWR's State Pumps in the Bay Delta Estuary when juvenile fish migrate through the Bay Delta Estuary to the Pacific Ocean. 22 million striped bass, salmon, and steelhead trout were document by DWR lost at the State Pumps. That number does not include the length of time the State Pumps was operating and it is a very low number of fish being damaged and lost. Consequently the Habitat Expansion Agreement (HEA) is deficient because the Agreement failed to take into consideration the losses to juvenile endangered spring-run salmon and juvenile threatened steelhead trout at the State Pumps. A glaring conflict of interest by DWR as a member of the Committee controlling the Habitat Expansion Plan**
- 10. PG&E's unlicensed and unmitigated Miocene Dam Hydro Project on the West Branch Feather River prevented the upstream migration of spring-run salmon and steelhead trout to their historic spawning and rearing areas in the West Branch Feather River before the construction of Oroville Dam because PG&E does not release or is not required to release daily year round flows from the Miocene Dam. Today the West Branch Feather River from the Miocene Dam to Oroville Reservoir is dewatered because of the greed of PG&E to not provide water for the river to satisfy the operation of their small hydropower projects associated with the Miocene Dam. A glaring conflict of interest by PG&E as a member of the Committee controlling the Habitat Expansion Plan.**
- 11. The Habitat Expansion Agreement does not provide a specific number of adult steelhead to be mitigated in the Sacramento River watershed. As a starter I recommend a minimum of 50,000 adult steelhead, which includes their pre-project spawning, and rearing areas above Shasta Dam; above Oroville Dam; above Englebright Dam; above Bullards Bar Dam; above Folsom Dam and all other tributaries to the Sacramento River. i.e. Auburn Ravine. Correct this discrepancy.**
- 12. What are the projected number of steelhead that will be mitigated in the Habitat Expansion Plan for the following rivers and streams?**
 - (A) Below Oroville Dam; Feather River**
 - (B) Above Oroville Dam; NFFR; WBFW; MFFR**
 - (C) Above Shasta Dam; McCloud; Pit; Upper Sacramento et al**

- (D) Below Shasta Dam; Sacramento River**
- (E) Below Englebright Dam; Yuba River**
- (F) Above Englebright Dam; Yuba River**
- (G) Below Bullards Bar Dam; North Yuba River**
- (H) Above New Bullards Bar Dam; North Yuba River;**
- (I) Below Folsom Dam; American River Watershed**
- (J) Above Folsom Dam; American River Watershed**
- (K) Bear River;**
- (L) Butte Creek;**
- (M) Big Chico Creek;**
- (N) Deer Creek;**
- (O) Mill Creek;**
- (P) Battle Creek;**
- (Q) Bear Creek;**
- (R) Cow Creek;**
- (S) Clear Creel;**
- (T) Cottonwood Creek;**
- (U) Paynes Creek;**
- (V) Antelope Creek;**
- (W) Elder Creek**
- (X) Thomes Creek**
- (Y) Stony Creek**
- (Z) Auburn Ravine**

- 13. The California Fish and Water Unlimited recommends a bare minimum of 100,000 adult spring-run salmon are mitigated under the Habitat Expansion Agreement for the Sacramento River Watershed, which includes their pre-project spawning and rearing areas above Shasta Dam; above Oroville Dam; above Englebright Dam; above Bullards Bar Dam; above Folsom Dam and all other tributaries to the Sacramento River.**
- 14. Spring-run Chinook salmon species are listed as endangered under the federal Endangered Species Act. All dam owners have an obligation to mitigate for losses to endangered spring-run salmon above their dams. That includes DWR and PG&E. All dam owners have the duty and responsibility to comply with the provisions of the federal Endangered Species Act.**
- 15. Steelhead trout species are listed as threatened under the federal Endangered Species Act. All dam owners have an obligation to mitigate for losses to threatened steelhead trout above their dams. That includes DWR and PG&E. All dam owners have the duty and responsibility to comply with the provisions of the federal Endangered Species Act.**

- 16. The US NOAA Fisheries has the duty and responsibility to enforce the federal Endangered Species Act and protect and mitigate for all losses of endangered spring-run salmon and threatened steelhead trout caused by the construction and operation of all dams and diversions in the Sacramento River watershed.**
- 17. There has been the “taking” of endangered salmon in the Sacramento River watershed. All dam owners must be required by the US NOAA Fisheries to acquire “a take permit” that mitigates for all damages and harm to spring-run salmon and their habitat.**
- 18. There has been the “taking” of threatened steelhead in the Sacramento River watershed. All dam owners must be required by the US NOAA Fisheries to acquire “a take permit” that mitigates all damages and harm to spring-run salmon and their habitat.**
- 19. The Habitat Expansion Agreement was not subject to public review and comments by the public and was agreed to privately and politically among state and federal agencies and one (1) NGO. A NEPQA and CEQA document that supported the terms and conditions in the Habitat Expansion Agreement were not prepared with full public participation and opportunity for comments.**
- 20. There are several federal and state agencies that signed the Habitat Expansion Agreement without providing public notice to the public using their agency public review and participation processes before the agreement was signed. Those agencies were: (a) CDWR; (b) PG&E; (c) US NOAA Fisheries; (d) US Fish and Wildlife Service; (e) California Department of Fish and Game; (f) US Forest Service; and (g) State Water Resources Control Board (Art Baggett Jr.).**
- 21. Art Baggett Jr. of the State Water Resources Control Board signed the Habitat Expansion Agreement without the SWRCB holding a hearing to receive evidence, testimony, and public comments whether the terms and condition of the Habitat Expansion Agreement were in compliance with the state statutes and also were reasonable considering the state of anadromous fisheries in California.**
- 22. Three (3) state agencies signed the Habitat Expansion Agreement without preparing a CEQA document for public review and comment to justify the terms and conditions of the Agreement pursuant to the California Environmental Quality Act and its Guidelines.**
- 23. Three (3) federal agencies signed the Habitat Expansion Agreement without preparing a NEPA document for public review and comment**

to justify the terms and conditions of the Agreement pursuant to NEPA.

24. American Rivers who signed the Habitat Expansion Agreement did not represent the interest of the California Fisheries and Water Unlimited and most likely many other NGOs.

25. The State Water Contractor who signed the Habitat Expansion Agreement did not represent the interest of the California Fisheries and Water Unlimited. The interest of the State Water Contractors is self-serving.

The California Fish and Water Unlimited is formally requesting a combined NEPA (EIS) and CEQA (EIR) document is prepared for the draft Habitat Expansion Plan before it is finalized. Said combined draft EIS and EIR must have wide spread public distribution in the greater Sacramento River Watershed for public review and participation. I request a copy of the draft EIS/EIR document for my review and comment.

The California Fish and Water Unlimited is formally requesting the specific reasons why the US NOAA Fisheries; US Fish and Wildlife Service; and the California Department of Fish and Game are not members of the Habitat Expansion Agreement Committee. All three of these state and federal agencies have a duty and responsibility to protect endangered spring-run salmon and steelhead trout species and their habitat of the Sacramento River watershed.

The California Fish and Water Unlimited is formally requesting a signed copy of the Habitat Expansion Agreement from you. Please forward said agreement electronically to me. See attachment (HEA).

The California Fish and Water Unlimited is formally requesting the opportunity to review the draft Habitat Expansion Plan at this time and also in the future. Forward the draft Plan electronically to me. I reference the California Public Information Act Section 6250 et seq. The California Fisheries and Water Unlimited is a non-profit California Corporation. Consequently waive all fees for material forwarded to me

The California Fish and Water Unlimited is requesting the minutes that are taken of all committee meetings and that all Committee meeting minutes are published on the internet at a specific public website. Forward copies of all committee-meeting minutes held to date. Also forward past and future agendas, and agenda material to me. Also maintain a roll call of the people attending the meetings.

The California Fish and Water Unlimited is also requesting a teleconference system is used so that the public can call in and take part at the committee meetings. Forward the teleconference telephone number to me with the password and also makes it available to the public.

Develop a mailing list of interested parties such as California licensed anglers and also California fishery organizations for the purpose of forwarding agendas, minutes, material et al.

I am disabled and cannot travel to Sacramento for Committee meetings. I am also hearing impaired so please use a sound system that assist hearing impaired persons pursuant to California disability statues and regulations. Thank you.

A written response is requested within 10 days pursuant to the California Public Information Act Section 6250 et seq.

Respectfully

Signed by Robert J, Baiocchi

**Robert J. Baiocchi, President,
California Fisheries and Water Unlimited
California Non-Profit Corporation**

cc: Mr. Steve Edmondson, Supervisor, US NOAA Fisheries

Interested Parties (California Licensed Anglers)